

**EXHIBIT 11**

**to**

**PAUL D. BRACHMAN DECLARATION  
IN SUPPORT OF INTUITIVE'S MOTION FOR  
LIMITED SUPPLEMENTAL DISCOVERY**

**From:** Michael, William <wmichael@paulweiss.com>  
**Sent:** Thursday, July 18, 2024 10:09 PM  
**To:** Richard McCaulley <richard@mccaulleylawgroup.com>; Brachman, Paul D <pbrachman@paulweiss.com>; Steve Sherry <steve@mccaulleylawgroup.com>  
**Cc:** Josh Van Hoven <josh@mccaulleylawgroup.com>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Dear Rick,

Based on our discussion yesterday, my understanding is that SIS will oppose any supplemental discovery and will not agree to produce the categories of post-November 2022 information described in my letter of June 24. I further understand that SIS is continuing to seek damages for the period after November 2022 and into the future, and that SIS may or may not serve an updated damages disclosure from its expert, but will not agree to provide any of the damages-related discovery described in my June 24 letter.

It would appear we are at an impasse on these issues and Intuitive will need to seek relief from the Court. Nevertheless, I suggested that if the parties are willing to enter into a stipulation as to certain facts regarding the post-November 2022 time period, we may be able at least to narrow the areas of dispute. To that end, I am attaching a proposed fact stipulation. Please let us know if SIS would be willing to stipulate to these facts.

Given the time that has already elapsed since we raised these issues with you in June, I would appreciate it if you could get back to us with your position on the proposed stipulation — as well as any further response you may wish to make to our letter — by no later than next Tuesday, July 23.

I am available to discuss in the meantime if you would like.

Best,  
Bill

**William B. Michael | Partner ([Bio](#))**  
**Paul, Weiss, Rifkind, Wharton & Garrison LLP**  
1285 Avenue of the Americas | New York, NY 10019-6064  
+1 212 373 3648 (Direct Phone) | +1 212 492 0648 (Direct Fax)  
[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com) | [www.paulweiss.com](http://www.paulweiss.com)  
*Pronouns: He/Him*

**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Wednesday, July 17, 2024 11:21 AM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

Paul:

Sure, I am free at 3:30 p.m. EDT.

Thanks,

Rick

**From:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>

**Date:** Wednesday, July 17, 2024 at 5:30 AM

**To:** Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>, Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>

**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>, Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>

**Subject:** RE: SIS v. Intuitive - joint case management statement

Rick,

Thanks for your voicemail yesterday. Bill and I are available between 3 and 4 ET this afternoon. Could we plan to talk sometime in that window? Please let me know.

Thanks,

Paul

**Paul Brachman | Partner**

**Paul, Weiss, Rifkind, Wharton & Garrison LLP**

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**From:** Brachman, Paul D

**Sent:** Monday, July 15, 2024 6:23 PM

**To:** Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>

**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Michael, William <[WMichael@paulweiss.com](mailto:WMichael@paulweiss.com)>

**Subject:** RE: SIS v. Intuitive - joint case management statement

All,

Thanks again for your proposed edits. We have responded in the attached, which includes comments explaining our changes. As you will see, we have tried to simplify the stipulation and proposed order by quoting from the relevant portion of the Court's summary judgment ruling.

Could you please let us know when you are available tomorrow to discuss this document and your team's responses to the issues raised in Bill's June 24 letter, which responses we understand we will receive from you today?

Best,

Paul

**Paul Brachman | Partner**

**Paul, Weiss, Rifkind, Wharton & Garrison LLP**

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[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com) | [www.paulweiss.com](http://www.paulweiss.com)

**From:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Sent:** Saturday, July 13, 2024 6:51 PM  
**To:** Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Thank you. Paul is perfectly fine, and thank you for sending this along. We will review.

Please extend my best wishes to Rick.

All best,  
Paul

**Paul Brachman** | Partner  
**Paul, Weiss, Rifkind, Wharton & Garrison LLP**  
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**From:** Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Date:** Saturday, Jul 13, 2024 at 6:12 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>, Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>, Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

Mr. Brachman,

Rick McCaulley is dealing with some family matters and asked that forward to you the redlined / marked up version of the draft proposed stipulation and proposed order addressing the scope of the court's summary judgment decision on Intuitive's counterclaims and unclean hands defense.

Rick also asked me to pass on his apologies for not getting back to you sooner on the stipulation. He expects to be able to address the remaining items raised in Mr. Michael's June 24<sup>th</sup> letter on Monday.

Regards,  
Steve Sherry

**Stephen Sherry**  
773-454-8124  
2040 Reno Highway, #220  
Fallon, Nevada 89406  
[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)



---

**From:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Sent:** Friday, July 12, 2024 10:18 AM  
**To:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Cc:** Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Thanks for the update, Rick. If there are any pieces of the items we discussed that you're able to get back to us on, even if not the full slate just yet, that would be helpful.

Please let us know.

Thanks,

Paul

**Paul Brachman | Partner**  
**Paul, Weiss, Rifkind, Wharton & Garrison LLP**  
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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Wednesday, July 10, 2024 8:23 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

Paul:

Apologies, my week has not gone according to plan. I will respond to the outstanding issues tomorrow.

Thanks,

Rick

Sent from my iPad

On Jul 10, 2024, at 7:39 AM, Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)> wrote:

Rick,

Thanks for the call last week. I hope you and your team had a good holiday. I'm writing to check in on some of the items we discussed. Do you have any suggested edits to the draft stipulation and proposed order re: the scope of the Court's summary judgment order, and/or updates in response to our letter on discovery issues?

Please let us know if it would be helpful to discuss this week.

Best,

Paul

**Paul Brachman | Partner**  
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**From:** Brachman, Paul D  
**Sent:** Monday, July 1, 2024 3:23 PM  
**To:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>

**Cc:** Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Michael, William <[WMichael@paulweiss.com](mailto:WMichael@paulweiss.com)>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Thanks, Rick. We'll send an invite for 3 ET. Safe travels.

**Paul Brachman | Partner**  
**Paul, Weiss, Rifkind, Wharton & Garrison LLP**  
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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Monday, July 1, 2024 3:20 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

Paul:

I am at the airport - got delayed by storms. We should be available Wednesday from 12-4 EDT. I will confirm tomorrow, but if you select a time in that window it should work.

Best,

Rick

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On Jul 1, 2024, at 3:06 PM, Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)> wrote:

Steve,

I hope you had a nice weekend. Please let us know when your team is available this week.

Best,

Paul

**Paul Brachman | Partner**

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**From:** Steve Sherry <[steve@mccauleylawgroup.com](mailto:steve@mccauleylawgroup.com)>

**Sent:** Monday, June 24, 2024 7:27 PM

**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>; Richard McCaulley <[richard@mccauleylawgroup.com](mailto:richard@mccauleylawgroup.com)>

**Cc:** Josh Van Hoven <[josh@mccauleylawgroup.com](mailto:josh@mccauleylawgroup.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>

**Subject:** Re: SIS v. Intuitive - joint case management statement

Hi Paul,

Rick is out of the country this week on vacation and does not have any convenient times available to discuss your email.

I'll reach out to Rick and ask about possible availability next week after he returns.

Regards,

Steve Sherry

**Stephen Sherry**

773-454-8124

2040 Reno Highway, #220

Fallon, Nevada 89406

[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)

<image001.png>

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**From:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Sent:** Monday, June 24, 2024 4:23 PM  
**To:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Rick, Josh, Steve,

Please see attached. Please let us know some times when you're available this week to discuss.

Best,

Paul

**Paul Brachman | Partner**  
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**From:** Brachman, Paul D  
**Sent:** Friday, June 21, 2024 2:27 PM  
**To:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Michael, William <[WMichael@paulweiss.com](mailto:WMichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Rick,

Following up from the CMC earlier this month, attached is a draft stipulation and proposed order addressing the scope of the court's summary judgment decision on Intuitive's counterclaims and unclean hands defense.

Please let us know any edits, or if it would be helpful to discuss.

Best,

Paul

**Paul Brachman | Partner**  
**Paul, Weiss, Rifkind, Wharton & Garrison LLP**  
2001 K Street, NW | Washington, DC 20006-1047  
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**From:** Brachman, Paul D  
**Sent:** Thursday, June 6, 2024 2:18 PM  
**To:** 'Richard McCaulley' <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Cc:** 'Josh Van Hoven' <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Michael, William <[WMichael@paulweiss.com](mailto:WMichael@paulweiss.com)>; 'Steve Sherry' <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Sorry for the double email—I just updated/corrected the invite to 330. Talk to you all at 330.

**Paul Brachman | Partner**  
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**From:** Brachman, Paul D  
**Sent:** Thursday, June 6, 2024 2:04 PM  
**To:** 'Richard McCaulley' <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; O'Loughlin, Robert J <[roloughlin@paulweiss.com](mailto:roloughlin@paulweiss.com)>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Thanks, Rick. I'll send a call invite for 330.

**Paul Brachman | Partner**  
**Paul, Weiss, Rifkind, Wharton & Garrison LLP**  
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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Thursday, June 6, 2024 1:48 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; O'Loughlin, Robert J <[roloughlin@paulweiss.com](mailto:roloughlin@paulweiss.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

I will be in an airport, but should be able to find a quiet spot

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On Jun 6, 2024, at 10:11 AM, Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)> wrote:

Thank you, Rick. How about 3:30PM ET? We'll send a call invite if that works for you.

Thanks,

Paul

**Paul Brachman | Partner**

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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>

**Sent:** Thursday, June 6, 2024 12:47 PM

**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>

**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; O'Loughlin, Robert J <[roloughlin@paulweiss.com](mailto:roloughlin@paulweiss.com)>

**Subject:** Re: SIS v. Intuitive - joint case management statement

Paul:

Sorry for the slow response. I could talk today until 4:30 EDT, or tomorrow morning after 12 EDT.

Best,

Rick

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On Jun 5, 2024, at 8:56 AM, Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)> wrote:

Rick,

Touching base. Would it be helpful to discuss the issues below before Friday? If so, please let us know some times that work for you today/tomorrow.

Thanks,

Paul

**Paul Brachman | Partner**

**Paul, Weiss, Rifkind, Wharton & Garrison LLP**

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**From:** Brachman, Paul D

**Sent:** Monday, June 3, 2024 11:44 AM

**To:** 'Richard McCaulley' <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>

**Cc:** 'Josh Van Hoven' <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[KGallo@paulweiss.com](mailto:KGallo@paulweiss.com)>; Michael, William <[WMichael@paulweiss.com](mailto:WMichael@paulweiss.com)>; 'Steve Sherry' <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; O'Loughlin, Robert J <[roloughlin@paulweiss.com](mailto:roloughlin@paulweiss.com)>

**Subject:** RE: SIS v. Intuitive - joint case management statement

Rick,

Following up, Bill and I are available between 1 and 3 PM ET tomorrow, if there's a time in that window that works for you. Please let me know. In advance, here are the references you asked for in your email last week.

On the counterclaims, it is Intuitive's position that the court granted partial summary judgment on counterclaims 1-4 only to the extent that those claims were based on alleged misstatements about the need for FDA clearance for resetting the use counters on EndoWrist instruments. See Dkt. 75 at 61 ¶ 85(v). Intuitive's counterclaims 1-4 were based on a number of alleged false statements and deceptive conduct unrelated to FDA issues, *see id.* ¶ 85(i)-(iv), (vi)-(ix), that were not the subject of SIS's motion or discussed in the Court's order. See Dkt. 204 at 9:6-8, 11:19-21 (quoting only ¶ 85(v)). Our position is that each

of those additional allegations unrelated to the FDA remains in the case and provides an independent basis for counterclaims 1-4.

As to Phillips, the Court's order on the Daubert motions excluded testimony that constituted "legal conclusions," including "Phillips's opinion applying the regulatory term 'remanufacturing' to the facts of th[e] case," and Phillips's "labeling of Intuitive's communications to its customers as 'false and misleading.'" Dkt. 203 at 20:2-23; *id.* at 20:12-13 ("Phillips's opinions interpreting how the regulatory framework applies to the facts of EndoWrist repair must be excluded."); *id.* at 20:22-23 ("Because Phillips's attribution of falsity advances a legal interpretation, it must be excluded."); *id.* at 21:2-5 ("Phillips 'cannot offer an ultimate opinion as to Plaintiffs' compliance or noncompliance with regulatory requirements, because an expert may not testify that certain conduct did or did not violate the law.'").

Best,

Paul

**Paul Brachman | Partner**

**Paul, Weiss, Rifkind, Wharton & Garrison LLP**

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**From:** Brachman, Paul D

**Sent:** Friday, May 31, 2024 3:12 PM

**To:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>

**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[KGallo@paulweiss.com](mailto:KGallo@paulweiss.com)>; Michael, William <[WMichael@paulweiss.com](mailto:WMichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; O'Loughlin, Robert J <[roloughlin@paulweiss.com](mailto:roloughlin@paulweiss.com)>

**Subject:** RE: SIS v. Intuitive - joint case management statement

Thanks, Rick. Our calendars here are a bit jammed today. Are there some times early next week that work for you? We'll send over the summary info you asked for below.

**Paul Brachman | Partner**

**Paul, Weiss, Rifkind, Wharton & Garrison LLP**

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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Thursday, May 30, 2024 8:45 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; O'Loughlin, Robert J <[roloughlin@paulweiss.com](mailto:roloughlin@paulweiss.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

Paul:

I now have a mediation scheduled for 1:00 to 3:30 EDT tomorrow. Please let me know if you would still like to talk and what the issue is with Phillips. It would be helpful to know what paragraphs of the counterclaims Intuitive contends remain viable after the Court's ruling as well.

Best,

Rick

**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Date:** Wednesday, May 29, 2024 at 5:21 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>, Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>, Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>, Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>, O'Loughlin, Robert J <[roloughlin@paulweiss.com](mailto:roloughlin@paulweiss.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

Paul:

Sorry for the slow response. I spent the day driving back and forth from my Tahoe house to San Francisco for the cancelled CMC. I can talk on Friday. What are the issues with the scope pf the Daubert ruling on Phillips?

Rick

**From:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Date:** Wednesday, May 29, 2024 at 10:34 AM  
**To:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>, Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>, Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>, Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>, O'Loughlin, Robert J <[roloughlin@paulweiss.com](mailto:roloughlin@paulweiss.com)>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Rick,

We can be available this afternoon if it would be helpful to discuss the issues flagged in the chain below re: the scope of the Court's SJ order on Intuitive's counterclaims and defense, and the scope of the Daubert ruling on Philips' testimony. Please let us know.

Thanks,

Paul

**Paul Brachman | Partner**  
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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Thursday, May 23, 2024 12:20 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>; O'Loughlin, Robert J <[roloughlin@paulweiss.com](mailto:roloughlin@paulweiss.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

We are looking at it, but probably don't have time to work through the details before Noon. I suggest that we schedule a call for early next week and work through the details. I have been on the road this week, but I suspect we can reach agreement about what is left.

Thanks,

Rick

---

On May 23, 2024, at 9:10 AM, Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)> wrote:

Thanks, Rick. We'll review and revert as quickly as we can. Quick question: am I right that you've deleted footnote 3 but are otherwise sticking to your position the scope of the Court's SJ order, as described in Section 4?

Copying in my colleague Bob who is helping me with these today.

**Paul Brachman | Partner**

**Paul, Weiss, Rifkind, Wharton & Garrison LLP**

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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>

**Sent:** Thursday, May 23, 2024 12:02 PM

**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>

**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>

**Subject:** Re: SIS v. Intuitive - joint case management statement

Paul:

Latest draft of the CMS attached. We eliminated fn 3, and rewrote the ADR section.

Thanks,

Rick

**From:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Date:** Wednesday, May 22, 2024 at 2:13 PM  
**To:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>, Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>, Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>, Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Rick,

Please see attached our additions to the joint CMC statement. A redline to the version you sent us is also attached.

We would like to see if there is a way for the parties to agree on a more neutral presentation of the issues in Section 12 re: Settlement/ADR. Please let us know if it would be useful to discuss.

Best,

Paul

**Paul Brachman | Partner**  
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[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com) | [www.paulweiss.com](http://www.paulweiss.com)

**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Tuesday, May 21, 2024 3:46 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

Sounds good, thanks.

---

On May 21, 2024, at 2:27 PM, Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)> wrote:

Rick, thanks for the call. Attached are Intuitive's Answer/Counterclaims, SIS's MSJ and Intuitive's opposition, and the Court's Order.

As discussed, we will aim to send you our markup of the draft joint CMS statement tomorrow.

Best,

Paul

**Paul Brachman | Partner**  
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**From:** Brachman, Paul D  
**Sent:** Tuesday, May 21, 2024 1:08 PM  
**To:** 'Richard McCaulley' <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kGallo@paulweiss.com](mailto:kGallo@paulweiss.com)>; Michael, William <[WMichael@paulweiss.com](mailto:WMichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Sounds good. Talk soon.

**Paul Brachman | Partner**  
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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Tuesday, May 21, 2024 12:50 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

Just call my cell - thanks.

---

On May 21, 2024, at 11:48 AM, Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)> wrote:

Thanks, Rick. It'll be me and Bill today. We can call you directly at two, or send a dial-in. Just let me know what you prefer.

Thanks,

Paul

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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Tuesday, May 21, 2024 12:42 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

Sure - just call my cell. 312-330-8105. If it's just the two of us call anytime.

Rick

---

On May 21, 2024, at 11:07 AM, Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)> wrote:

Thanks, Rick. Are you available at 2PM ET today for a quick call to touch base on one issue?

Thanks,

Paul

**Paul Brachman | Partner**  
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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Monday, May 20, 2024 9:51 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael,

William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

Paul:

A working draft is attached. I still need to review it with my client.

Best,

Rick

Sent from my iPad

On May 17, 2024, at 7:50 PM, Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)> wrote:

Rick, Josh, Steve—thanks for the call earlier this week. Just checking in on the draft of your portions of the CMC statement.

Thanks,

Paul

**Paul Brachman | Partner**  
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+1 202 223 7440 (Direct Phone) | +1 202 379 4098 (Direct Fax)  
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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Monday, May 13, 2024 2:55 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

Paul:

We think that the majority of items for the CMS can be handled by referring back to Dkt. 180. The issue that we want to discuss are:

Section 8. Discovery

DISCUSS WHETHER INTUITIVE WILL SEEK TO REOPEN DISCOVERY. KEN SUGGESTED THAT INTUITVE MIGHT SEEK TO TAKE 5 TRIAL DEPOSITIONS.

Section 12. Settlement and ADR

DISCUSS WHETHER INTUITIVE'S POSITION (EXPRESSED BY RUBY) THAT IT HAS NO INTEREST IN ENGAGING IN ANY SETTLEMENT CONVERSATION REMAINS INTUITVE'S POSITION

Section 16. Scheduling

DISCUSS PROPOSING FINAL PRETRIAL CONFERENCE DATE AND DATE FOR STARTING JURY TRIAL

Section 17. Trial

DISCUSS INTUITIVE'S POSITION THAT THE TRIAL SHOULD BE CONSOLIDATED WITH THE HOSPITAL PLAINTIFFS' ANTITRUST CLASS ACTION

Let me know if there are other issues that Intuitive would like to discuss.

Thanks,

Rick

**From:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Date:** Monday, May 13, 2024 at 10:00 AM  
**To:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>, Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>, Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>, Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Thanks, Rick. Talk tomorrow.

Best,

Paul

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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Monday, May 13, 2024 12:59 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

That works. We will get you our list of things to discuss by the end of the day.

---

On May 13, 2024, at 9:37 AM, Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)> wrote:

Thanks, Rick. How about 12:30-1 ET? I can send a link. We'd appreciate if you could send your issues list over today, so that we can give it some thought before we speak tomorrow.

Best,

Paul

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**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>

**Sent:** Monday, May 13, 2024 12:16 PM

**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>

**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>; Steve Sherry <[steve@mccaulleylawgroup.com](mailto:steve@mccaulleylawgroup.com)>

**Subject:** Re: SIS v. Intuitive - joint case management statement

Paul:

We are available anytime from 12-4 EDT tomorrow. Wednesday is not good for our side.

If you could please include Steve Sherry (copied here) on emails I would appreciate it. Thanks.

Best,

Rick

**From:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Date:** Monday, May 13, 2024 at 6:34 AM  
**To:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>, Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>, Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>  
**Subject:** RE: SIS v. Intuitive - joint case management statement

Thanks, Rick. We could do a call tomorrow or Wednesday. Could you please let us know some times that work for you, and could you also please send us a list of the topics/issues you want to cover?

Best,

Paul

**Paul Brachman | Partner**  
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[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com) | [www.paulweiss.com](http://www.paulweiss.com)

**From:** Richard McCaulley <[richard@mccaulleylawgroup.com](mailto:richard@mccaulleylawgroup.com)>  
**Sent:** Friday, May 10, 2024 3:45 PM  
**To:** Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)>  
**Cc:** Josh Van Hoven <[josh@mccaulleylawgroup.com](mailto:josh@mccaulleylawgroup.com)>; Gallo, Kenneth A <[kgallo@paulweiss.com](mailto:kgallo@paulweiss.com)>; Michael, William <[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)>  
**Subject:** Re: SIS v. Intuitive - joint case management statement

Paul:

We think it makes sense to get on a call and see where there might be areas of agreement. We are happy to circulate a draft after that.

Thanks,

Rick

---

On May 10, 2024, at 12:01 PM, Brachman, Paul D <[pbrachman@paulweiss.com](mailto:pbrachman@paulweiss.com)> wrote:

Counsel,

Ahead of the May 30 case management conference in *SIS v. Intuitive*, could you please send us by next Thursday your draft portions of the updated joint case management statement?

Have a good weekend.

Best,

Paul

**Paul Brachman | Partner**  
**Paul, Weiss, Rifkind, Wharton & Garrison LLP**  
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<2023.04.13 - ECF 137 - Oppn re 127 MOTION for Partial Summary Judgment Opposition - SEALED.pdf>

<2021.12.14 - ECF 75 - ANSWER to Complaint with Jury Demand COUNTERCLAIM Defendant Intuitive.pdf>

<2024.03.31 - ECF 204 - Order re Cross Motions for Summary Judgment.pdf>